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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NICHOLAS JAMES MCGUFFIN, as an individual and as guardian *ad litem*, on behalf of S.M., a minor,

Plaintiffs,

v.

MARK DANIELS, PAT DOWNING, SUSAN HORMANN, MARY KRINGS, KRIS KARCHER, SHELLY MCINNES, RAYMOND MCNEELY, KIP OSWALD, MICHAEL REAVES, JOHN RIDDLE, SEAN SANBORN, ERIC SCHWENNINGER, RICHARD WALTER, CHRIS WEBLEY, ANTHONY WETMORE, KATHY WILCOX, CRAIG ZANNI, DAVID ZAVALA, JOEL D. SHAPIRO AS ADMINISTRATOR OF THE ESTATE OF DAVID E. HALL, VIDOCQ SOCIETY, CITY OF COQUILLE, CITY OF COOS BAY, and COOS COUNTY,

Defendants.

Case No. 6:20-cv-1163-MK

STATE DEFENDANTS' UNOPPOSED MOTION TO CONSOLIDATE

CERTIFICATE OF CONFERRAL

Pursuant to L.R. 7-1(a)(1), undersigned counsel certifies that he has conferred in good faith with all parties to both cases to be consolidated before filing this motion and represents that all parties consent to this motion.

MOTION

Defendants Susan Hormann, Mary Krings, John Riddle, and Kathy Wilcox (“State Defendants”) respectfully move the Court for an order consolidating this case for all purposes with another case currently pending before this Court. The two cases to be consolidated are:

Case No. 3:21-cv-01719-AC, *Nicholas James McGuffin, et al. v. Oregon State Police*; and

Case No. 6:20-cv-01163-MK, *Nicholas James McGuffin, et al. v. Dannels, et al.*

Pursuant to L.R. 42, State Defendants provide the following information:

1. Case number, case title, and assigned judge of every related case pending in the District of Oregon.

Case No. 6:20-cv-01163-MK, *Nicholas James McGuffin, et al. v. Dannels, et al.*, assigned to the Honorable Mustafa T. Kashubai; and

Case No. 3:21-cv-01719-AC, *Nicholas James McGuffin et al. v. Oregon State Police*, assigned to the Honorable John V. Acosta.

2. The case number, case title, assigned judge, and court location of every other related case pending in any other state or federal court.

None.

3. The common question of law or fact at issue in each case.

Plaintiffs Nicholas McGuffin and his minor child filed Case No. 6:20-cv-01163-MK in July 2020. Now in their First Amended Complaint, Plaintiffs assert federal and state claims arising out of Mr. McGuffin’s conviction in 2011 for manslaughter for the death of Leah Freeman, a conviction that was vacated on post-conviction relief in 2019. The defendants include the four State Defendants, who are current and former employees of the Oregon State

Police (OSP). The other defendants are the City of Coquille and Coos County, current and former law enforcement officials of those municipalities, and two private party defendants. Plaintiffs assert defendants, among other things, fabricated evidence, failed to disclose exculpatory evidence, and conspired to falsely convict Mr. McGuffin. Plaintiffs assert ten counts under 42 U.S.C. § 1983 against defendants, as follows: 1) wrongful conviction using fabricated evidence in violation of the 14th Amendment, 2) malicious prosecution, 3) illegal pretrial detention, 4) failure to disclose exculpatory information, 5) failure to intervene, 6) conspiracy, 7) destruction of exculpatory evidence, 8) unconstitutional policies and practices of the municipal defendants, 9) violation of the minor plaintiff's 14th Amendment rights, and 10) a vicarious liability claim against one of the private party defendants. Plaintiffs also assert state law claims for false imprisonment, malicious prosecution, conspiracy, negligent training and supervision of the municipal defendants, intentional infliction of emotional distress, and spoliation of evidence. Case No. 6:20-cv-01163-MK will be referred to as the "original case."

Case No. 3:21-cv-01719-AC was initially filed in Clackamas County Circuit Court and was removed to this Court by OSP. Case No. 3:21-cv-01719-AC will be referred to as the "removed case." The plaintiffs in both cases are identical. In the removed case, plaintiffs again assert federal and state law against OSP, alleging that wrongful conduct of current and former OSP officials resulted in his conviction. The allegedly wrongful conduct pleaded in the removed case is the very same conduct alleged to be wrongful in the original case and pertains to the same four individual State Defendants who are named in the original case. The claims in the removed case largely overlap with the claims in the original case as those claims pertain to OSP. The claims in the removed case are one claim under 42 U.S.C. § 1983 for unconstitutional policies, practices, and customs, and several state law tort claims, false imprisonment, malicious prosecution, conspiracy, negligent training and supervision, intentional infliction of emotional distress, and spoliation of evidence.

In the original complaint in the original case, plaintiffs named OSP as a defendant. After the Court dismissed plaintiffs' 42 U.S.C. § 1983 claims against OSP, plaintiffs filed their First Amended Complaint, in which they no longer name OSP as a defendant on any claims, and instead proceed against just the individual defendants, the municipal defendants, and the private party defendants. Two days after filing the First Amended Complaint in the original case, plaintiffs filed the state court case against OSP on October 29, 2021, which OSP removed.

Both cases feature identical plaintiffs and target the same conduct by OSP or its officers, essentially asserting that that conduct resulted in the wrongful conviction of Mr. McGuffin. The cases share a significant core of parties, operative facts, claims, and defenses.

4. The status in each case of all pending motions, court-imposed deadlines, case management schedules, trial dates, etc.

In Case No. 6:20-cv-1163-MK (the original case), all defendants filed motions to dismiss. After those motions were granted in part and denied in part, plaintiffs filed a First Amended Complaint on October 27, 2021. Motions to dismiss or partial motions to dismiss were filed against that complaint by all defendants and remain pending at this time. Defendants' reply memoranda in support of their motions are currently due on February 4, 2022.

Shortly after filing their First Amended Complaint in the original case, plaintiffs filed their state court case and OSP timely removed. OSP has not yet responded to the complaint in the removed case. That response is due on February 7, 2022. OSP anticipates that its initial response will largely incorporate the partial motion to dismiss that it filed in the original case.

Neither case has a scheduled trial date, significant court-imposed deadlines, or case management schedules at this time. Discovery is underway but is not complete.

5. The reason the cases should be reassigned and managed by a single judicial officer.

The cases involve significant overlap of parties, claims, and material facts. It will be considerably more efficient for the parties and the Court to have all the disputed issues resolved in one consolidated judicial proceeding by one judicial officer.

6. The position of the other parties, if known.

All parties in both cases consent to consolidation of the removed case for all purposes.

7. The scope of consolidation requested, e.g., for hearing on a motion; for pretrial and discovery; or for all further proceedings, including trial.

This motion is consolidation of both actions for all further proceedings, including trial.

A proposed form of caption after consolidation is filed attached to this motion. Unless otherwise directed by the Court, as the earliest filed of the two cases, this case should be designated at the “Lead Case” under L.R. 42-4(a), and the removed case should be designated as the “Trailing Case.”

For the reasons set forth above, State Defendants respectfully request that the Court grant the motion and consolidate the two cases for all purposes.

DATED February 4, 2022.

Respectfully submitted,

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Wilcox and Oregon State Police

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Defendants.

Case No. 6:20-cv-1163-MK (Lead Case)

NICHOLAS JAMES MCGUFFIN, as an individual and as guardian ad litem, on behalf of S.M., a minor,

Plaintiff,

v.

OREGON STATE POLICE,

Defendant.

Case No. 3:21-cv-01719-AC (Trailing Case)